

# **CHESHIRE EAST COUNCIL**

## **REPORT TO: STANDARDS COMMITTEE**

---

**Date of Meeting:** 18 June 2012  
**Report of:** Borough Solicitor / Monitoring Officer  
**Subject/Title:** Localism Act 2011 – Procedure for Complaints  
under the new Code

---

### **1.0 Report Summary**

- 1.1 The report asks Members to approve and recommend to Full Council the adoption of a new procedure for investigating complaints under the Council's new Code of Conduct as required by the Localism Act 2011.

### **2.0 Decision Requested: That**

- 2.1 The procedure relating to the investigation of complaints under the new Code of Conduct at Appendix 1 of the report together with the criteria used to evaluate complaints at Appendix 3 is recommended for adoption by the Council on 19 July 2012.
- 2.2 Members recommend that the Constitution Committee at its meeting on the 5 July 2012 approve the Terms of Reference set out at Appendix 4 for formal adoption by the Council on 19 July 2012

### **3.0 Reasons for Recommendations**

- 3.1 To comply with the provisions of the Localism Act 2011 which requires the Council to have in place appropriate procedures to deal with any breaches of the new Code of Conduct with effect from July 2012.

### **4.0 Wards Affected**

- 4.1 All

### **5.0 Local Ward Members**

- 5.1 All

### **6.0 Policy Implications**

- 6.1 Strong Ethical Governance, including a robust and transparent policy for investigation of alleged breaches of the Code of Conduct, is critical to the Corporate Governance of the Council and also underpins the Council's decision making processes as a whole.

## **7.0 Financial Implications**

- 7.1 Costs of investigating breaches are dependent upon the number of complaints received which are referred for investigation, however at the moment it is anticipated that costs will be met from existing resources.

## **8.0 Legal Implications**

- 8.1 The Localism Act 2011 is being implemented over a phased period of time. The provisions in relation to the replacement of the current Standards regime are due to be brought into force with effect from 01 July 2012. The Act requires that the Council not only adopts a Code of Conduct but has in place effective procedures to enable the investigation of any complaints or allegations that a Member has been in breach of the Code of Conduct.

## **9.0 Risk Management**

- 9.1 If the Council fails to adopt an appropriate process for the investigation of complaints which is not only fit for purpose, but robust and transparent, then there are risks to the Council not only from a reputational management viewpoint but also to the integrity of the Council's Corporate Governance and decision making processes as a whole.

## **10.0 Background**

- 10.1 Under the Localism Act 2011 the Council has a statutory duty to promote and maintain high standards of conduct by both its elected Members and co-opted Members. The Council must adopt a Code of Conduct which sets out the conduct which is expected of Members whenever they act in their capacity as an elected Member and must also have in place a suitable procedure at a local level to investigate complaints that a Member is in breach of the new Code of Conduct.
- 10.2 The Borough Council is also responsible for investigating any allegations that a Town or Parish Councillor is in breach of their adopted Code of Conduct.
- 10.3 A suggested draft procedure is set out at Appendix 1 which provides for:-
- An initial assessment of the complaint by 3 Members plus the Independent Person within 21 days
  - The Panel may either take no action/ refer to the Group Leader for informal action / refer to Police or other regulatory agency / refer for local resolution / refer for external investigation
  - There is no right of appeal against the decision of the Initial Assessment Panel

- Under the local resolution option the Complainant and Subject Member plus up to one witness each would attend before an ad hoc panel of 3 elected Members together with the Independent Person
- The Local Resolution Panel will attempt to resolve issues without the need for a formal investigation and Hearing
- Matters may be referred from the Local Resolution Panel for formal investigation should it become apparent that issues are more complex or serious
- Any external investigation should be concluded within 8 weeks where practicable. If the investigation finds evidence of failure to comply with the Code of Conduct the Standards Hearing sub committee will conduct a Hearing to determine the complaint

10.4 Members are requested to approve the policy set out at Appendix 1. A flow chart summarising the procedure is attached at Appendix 2 for Members assistance.

## **11.0 Standard Documents**

11.1 Any Complainants will be asked to complete the Council's standard complaint form setting out in sufficient detail why the Complainant considers there has been failure to comply with the relevant Code of Conduct. This is the Council's current procedure and allows consistency of information to be placed before the initial assessment panel.

11.2 Complainants and Subject Members will also be asked to complete a standard form prior to the Local Resolution of any complaint. This is to allow basic information to be exchanged between the Complainant and Subject Member and for the panel itself to have sufficient information prior to the Local Resolution meeting. It should be noted that the Complainant and Subject Member may both appear before the Panel and bring one witness each.

11.3 Members are also asked to approve at Appendix 3 the criteria to be used at the initial Assessment meeting which helps determine which of the available options the panel should consider. This is based on the criteria used previously when assessing complaints under the current code.

## **12.0 Terms of Reference**

12.1 Members are asked to approve the Terms of Reference at Appendix 4 of

- Audit and Governance Committee
- the Initial Assessment Panel
- the Local Resolution Panel
- the Hearing sub-committee

Constitution Committee at its meeting on 5 July 2012 will be asked to recommend that the Council approves their formal adoption.

- 12.2 Members are asked to note that if a Member has sat on a Local Resolution Panel which subsequently refers the matter for external investigation then he or she should not subsequently sit on any Hearings sub-committee.

### **13.0 Independent Person**

- 13.1 The Act requires that the Authority appoints 1 or more Independent Persons whose:

- Views must be sought and taken into account by the Authority before it makes a finding that any Member has failed to comply with its Code of Conduct or impose any sanction
- Views may be sought on whether to investigate a complaint and how to deal with a particular allegation
- In addition any Member against whom an allegation has been made (including a Town and Parish Councillor) may consult him or her regarding the allegation

- 13.2 The Act itself prevents any person who has been a Member or a co-opted Member of Cheshire East Council in the last 5 years from being appointed as an Independent Person. Accordingly current or past Independent Members of the Council's Standards Committee are prevented from being Independent Persons for the same Council under the 2011 Act. However draft regulations are now available setting out transitional arrangements which will enable the Council to have the option to appoint persons who have previously been Independent Members as the new Independent Persons in view of the loss of skill and expertise which would otherwise occur.

- 13.3 At the May Council meeting the Monitoring Officer was given delegated authority to undertake a recruitment process for up to 3 Independent Persons as required under Section 28(7) of the Localism Act 2011 once details of the transitional provisions had been received.

- 13.4 Accordingly a job description and person specification has been drafted in order to recruit up to 3 Independent Persons. The closing date is for applications is 25 June 2012 with interviews scheduled for the week commencing 2 July 2012.

- 13.5 Full Council must approve the appointment of the new Independent Persons. At Annual Council on 16 May 2012 Council indicated that if necessary in order to comply with statutory timescales the Council's Urgency sub-committee should approve the provisional appointment of Independent Persons subject to formal ratification by Full Council at the July meeting. Given the lateness of the regulations being made this may not be necessary.

## **14.0 Summary**

- 14.1 Members are asked to note and approve the proposed procedure for the investigation of complaints under the new Code of Conduct and note that this procedure will apply to any complaints against Town and Parish Councillors as well as Cheshire East Councillors.

## **15.0 Access to Information**

- 15.1 The background papers relating to this report can be inspected by contacting the report writer:

Name: Caroline Elwood  
Designation: Borough Solicitor  
Tel No: 01270 685882  
Email: [caroline.elwood@cheshireeast.gov.uk](mailto:caroline.elwood@cheshireeast.gov.uk)